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RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
RUCPDOG/DEPT OF COMMERCE WASHDC
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RUEAWJL/DEPTJUSTICE WASHDC
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SIPDIS

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STATE FOR EAP/CM - JYAMOMOTO AND EB/IPE - EFELSING
STATE FOR INL - JVGIL
USTR FOR CHINA OFFICE - AWINTER; IPR OFFICE - RBAE; AND OCG -
SMCCOY
COMMERCE FOR NATIONAL COORDINATOR FOR IPR ENFORCEMENT
COMMERCE FOR CISRAEL
COMMERCE FOR MAC 3204/LRIGOLI, ESZYMANSKI
COMMERCE FOR MAC 3043/MCQUEEN
COMMERCE FOR MAC 3042/SWILSON, JYOUNG
COMMERCE FOR NWINETKE
LOC/COPYRIGHT OFFICE - MPOOR
USPTO FOR INT'L AFFAIRS - LBOLAND, EWU
DOJ FOR CCIPS - MDUBOSE
DOJ FOR SCHEMBTOB
FTC FOR BLUMENTHAL
FBI FOR LBRYANT
DHS/ICE FOR IPR CENTER - DFAULCONER, TRANDAZZO
DHS/CBP FOR IPR RIGHTS BRANCH - GMACRAY, PPIZZECK
ITC FOR LLEVINE, LSCHLITT

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [WTRO](#) [PGOV](#) [CH](#)

SUBJECT: CONSUL GENERAL'S IPR ROUNDTABLE - COMMUNICATION AND ACTION

REF: BEIJING 7192

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11. (SBU) Summary: Internet-based intellectual property rights (IPR) infringement continues to remain a pressing concern in south China, according to U.S. business people who participated in the Consul General's Annual IPR Roundtable on November 20, 2007. The participants also complained of inconsistent IPR enforcement among Chinese agencies, including different standards of evidence to begin an investigation, unclear thresholds to initiate a criminal prosecution, and different formulas used to value seized counterfeit goods. They noted poor coordination among Chinese enforcement agencies and asked for help in encouraging local officials to accept their offers to provide IPR training. In addition, they expressed interest in receiving more information from U.S. Customs and Border Protection on seizures in the United States and asked for Consulate assistance in arranging a meeting with one of the express delivery companies that has yet to take action on combating internet piracy. End summary.

Internet Infringement Increasing

12. (SBU) Websites that illegally market and sell counterfeit products directly to customers in China and around the world remain a threat to doing business for companies like Nike, according to

Nike Brand Protection Manager Bill Wei. Wei noted that China has no unified process for accepting complaints and closing down such sites; complainants are required to show evidence that the website has actually sold product and made a profit before authorities will act in many cases. Chris Cosgrove, Regional Manager of Asia Investigations for Mattel, also remarked upon losses due to internet sales of infringing products, but emphasized the greater problem of business-to-business sales of wholesale lots of infringed goods.

13. (SBU) Internet piracy was a key topic at this year's roundtable - as it was in 2006 - and the main IPR challenge to the recording industry in China. Rodney Tsui, Regional Operations Manager for IFPI, said there were thousands of websites in China offering illegal music downloads and called enforcement efforts "hopeless." He echoed the comments of Nike's Wei, pointing out that it is too difficult to prove that the infringers make a profit.

Hong Kong Registering Infringing Company Names

14. (SBU) Many IP-infringers in China register multiple Hong Kong company names to take advantage of a weak name registration system that presents major challenges to U.S. IP owners. Freeman Zhang of Colgate-Palmolive described infringers who may have registered as many as 16 different Hong Kong companies, misrepresenting themselves as "Hong Kong Colgate" and "Colgate Hong Kong." Other participants, including Nike and Motorola, similarly expressed dismay, even as they pointed to Hong Kong's positive record with other aspects of IP enforcement.

Inconsistent Enforcement among Chinese Authorities

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15. (SBU) Just getting an investigation under way is a big problem, with provincial and local Public Security Bureau (PSB) officials demanding different amounts of evidence from U.S. companies to look into IP-infringement activities in their jurisdictions, according to Microsoft Senior Regional Manager Estee Tam. Local PSB officials, on the other hand, often frown on IP owners investigating cases independently without first coordinating with law enforcement. U.S. companies must sometimes "shop around" for a qualified enforcement body that will investigate a case. Tam said his company spent months raising an enforcement case with authorities in different Chinese jurisdictions before a local PSB office agreed to investigate and prosecute an illegal software ring. The Consul General pointed out that many U.S. companies are not able to spend the time and money necessary to follow Microsoft's example in cases such as this one, but said that the USG would try to be of assistance wherever possible.

16. (SBU) Criminal thresholds also differ among Chinese jurisdictions, with many U.S. companies preferring to focus enforcement efforts in north China rather than the south. Although the criminal thresholds for IP infringement cases were officially reduced in April 2007, participants reported that local municipalities like Shenzhen in south China still require a much higher standard before taking enforcement action on behalf of IP owners. James Luo described Motorola's policy of confirming that criminal thresholds are exceeded by at least 150 percent before the company submits an enforcement request to Chinese authorities.

17. (SBU) Problems persist in how seized counterfeit goods are valued, but there is sign of improvement, according to the roundtable participants. Luo explained that in a recent case, Shenzhen authorities had used a formula to calculate the value of seized goods that returned a value nearly equal to the retail price. Although still slightly lower than retail, the value was much higher than the street price of counterfeit goods, which has often been used in the past.

18. (SBU) Participants also lamented interagency coordination problems among Chinese IP enforcement bodies. The Technical Supervision Bureau (TSB) can often be relied upon to act when counterfeit products can be shown to pose a risk to consumer health

or safety, but participants also told how local TSB branches can be reluctant to enforce IP rights in other cases. The Administration for Industry and Commerce (AIC) is similarly inconsistent, often engaging in what appears to be local protectionism for infringers of copyrights and trademarks. Motorola's Luo commented that in those cases where TSB initiates the investigation, the handover of evidence to PSB once it becomes a criminal case can be problematic. As a result, Motorola always endeavors to bring cases directly to PSB without involving other agencies.

Rejected Offers to Provide Training

¶9. (SBU) U.S. IP holders in south China are often frustrated by the failure of local Chinese agencies to take up their offer to provide training in IPR enforcement. Procter and Gamble Legal Counsel Gary Zeng described his company's efforts to arrange training for local PSB, TSB and AIC officials. He noted that the firm was particularly eager to provide product identification training in Shantou, Guangdong. He asked the Consulate to assist in P&G's outreach by encouraging local agencies to work with U.S. companies and accept

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training offers. Mattel's Cosgrove endorsed this approach.

Unique Challenges for Patent Holders

¶10. (SBU) Patent violation cases are extremely difficult to pursue, according to DTS Digital Entertainment Greater China Managing Director Kin Chan. He said his attorney had advised him not even to pursue patent infringement law suits because they would be too expensive and afforded little opportunity for success. He urged that the Chinese work with us to devise a special channel to pursue patent cases. Commenting that companies in China often see foreign technology patents as a form of imperialism, Chan called on the U.S. Mission to continue its efforts to explain the importance of IPR protection to China's economic development.

U.S. Government Can Help - Customs Information...

¶11. (SBU) U.S. company representatives from several industries were united in their desire for access to more U.S. Customs data after seizures take place in the United States. Chris Cosgrove from Mattel and Kin Chan from DTS both reported excellent cooperation with U.S. Customs, including receiving shipping data after counterfeits were seized in U.S. ports. Other U.S. companies, including Motorola and Colgate-Palmolive, indicated they too would like to receive this type of information, specifically the container number and port of embarkation for any Chinese counterfeit shipments seized in the U.S. Without this information, participants said the investigative trail turns cold in China.

...And Reaching Out to Express Delivery Companies

¶12. (SBU) U.S. companies described express delivery services as a key link in China's counterfeit sales supply chain. Nike's Bill Wei said a Consulate-hosted roundtable discussion among major private express delivery companies last year had been highly successful at enhancing cooperation between these companies and IP owners, but representatives of the government's EMS service did not participate and have not been as cooperative. He asked that the Consulate host a follow-up discussion with express delivery companies, including EMS, to further cooperation and help prevent future delivery of infringing products.

Comment - Communicating B2G, G2B and B2B too

¶13. (U) The Roundtable gave U.S. IP holders a chance to express their individual and shared IPR enforcement concerns with the Consul General and other Congenoffs. In turn, we briefed on what the government is doing to assist them and undertook to further our dialogue in addressing their concerns. In addition, the

participants took advantage of the opportunity to communicate with each other and identify ways they can work together to enhance industry efforts to improve IPR protection in south China. The addition of a new PTO officer - Conrad Wong - was commented upon favorably by local U.S. company reps and rights holders.

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